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MEMORANDUM OF UNDERSTANDING

between

MASSACHUSETTS TURNPIKE AUTHORITY

and

THE CITY OF BOSTON, acting by and through the
BOSTON REDEVELOPMENT AUTHORITY

Dated as of June 1, 1997

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MEMORANDUM OF UNDERSTANDING

between

Massachusetts Turnpike Authority

and

The City of Boston, acting by and through the
Boston Redevelopment Authority

This Memorandum of Understanding ("MOU") entered into as of June 1, 1997 by and between the **Massachusetts Turnpike Authority** ("MTA") and **The City of Boston** (the "City"), acting by and through the **Boston Redevelopment Authority** ("BRA"), in accordance with Section 7 of Chapter 3 of the Acts of 1997 entitled "An Act Relative to the Massachusetts Turnpike Authority and the Metropolitan Highway System" (the "Act").

WHEREAS, pursuant to Chapter 81A of the General Laws of Massachusetts ("M.G.L."), the MTA owns and is responsible for the construction, maintenance, repair, reconstruction, improvement, rehabilitation, financing, use, policing, administering, control and operation of the "Metropolitan Highway System" (as defined in M.G.L. Chapter 81A, Section 3), including without limitation, the Boston extension, the Callahan Tunnel, the central artery, the central artery north, the Sumner Tunnel and the Ted Williams Tunnel (all as defined in M.G.L. Chapter 81A, Section 3), and further, owns certain sites and facilities abutting the Massachusetts Turnpike and the Metropolitan Highway System (the properties described herein are hereinafter collectively referred to as the "MTA Property");

WHEREAS, the MTA has the power to lease and otherwise dispose of the MTA Property, including without limitation, (a) any land and any air rights over land owned or held by the MTA, or to be acquired by the MTA, in connection with that part of the Metropolitan Highway System within the territorial limits of the City (collectively, "MTA Air Rights"), and specifically (b) any land and any air rights over land owned or held by the MTA, or to be acquired by the MTA, in connection with the Boston extension (as defined in M.G.L. Chapter 81A, Section 3) portion of the Massachusetts Turnpike within the territorial limits of the City (collectively, "Extension Air Rights");

WHEREAS, pursuant to M.G.L. Chapter 81A, Section 15, the MTA is exempt from building, fire, garage, health and zoning laws, ordinances, rules and regulations in the use of the Extension Air Rights;

WHEREAS, in adopting the Act, the legislature acknowledged that the City has an interest in ensuring that the concerns and needs of the citizens of Boston and particularly the concerns and needs of the members of the communities in which any MTA Property, including any MTA Air Rights, is located, are adequately addressed prior to the occurrence of any project proposed by the MTA that would involve the use of, and/or the disposition of, and/or construction and/or development on, any such property and/or air rights located within the territorial limits of the City of Boston or associated with the Boston extension portion of the Metropolitan Highway System;

WHEREAS, Section 7 of the Act obligates the City to enter into a memorandum of understanding, not later than June 1, 1997, relative to "land use plans, air rights, zoning restrictions and environmental impacts associated with any development in connection with the Boston extension portion of the metropolitan highway system or respecting land within the territorial limits of said city of Boston"; and

WHEREAS, this MOU is being entered into in accordance with the requirements of Section 7 of the Act.

NOW, THEREFORE, the MTA and the City, acting by and through the BRA, agree to the following:

Article 1
General Requirements

1.1 Central Artery Projects. The MTA hereby agrees that the use of MTA Air Rights related to land or facilities associated with the central artery, the central artery north and the Ted Williams Tunnel, acquired by the MTA from the Metropolitan Highway Authority in accordance with M.G.L. Chapter 81A, Section 12, shall be subject to all building, fire, garage, health or zoning laws, ordinances, rules or regulations applicable in the City of Boston. Any written agreements to be entered into by the MTA in accordance with M.G.L. Chapter 81A, Section 12(b) shall provide for the applicability of said laws, ordinances, rules and regulations as described above. Accordingly, the terms of this MOU shall not apply to the MTA Air Rights over the central artery, the central artery north and the Ted Williams Tunnel.

1.2 Extension Air Rights Projects. The City hereby agrees that the MTA is exempt from building, fire, garage, health and zoning laws, ordinances, rules and regulations in the use of the Extension Air Rights, except as specifically set forth in the Act and as hereinafter specifically set forth in this MOU.

1.3 Consultation with the Mayor.

(a) The MTA shall advise the Mayor of the City ("Mayor"), or any designee selected by the Mayor for that purpose, of any "Project" (as hereinafter defined), and regularly consult with the Mayor regarding any such Project until its completion.

(b) For purposes of this MOU, "Project" shall mean any project that is proposed by any entity for the development of MTA Property located within the territorial limits of the City of Boston, including without limitation the Extension Air Rights, other than projects (i) related to the construction, use, safety, maintenance, repair and operation of the Metropolitan Highway System, or (ii) proposed by the MTA substantially for the MTA's own use.

1.4 BRA Design Review. All Projects shall be subject to design review certification by the BRA as provided herein in Article 3. The MTA shall not approve the final design of any Project until it has received the BRA's certification pursuant to subsection 3.2(f)(2) hereof. In furtherance thereof, the MTA shall regularly consult with the Director of the BRA regarding any such Project.

Article 2
Citizen's Advisory Committees

2.1 Formation of CACs. With respect to any proposed Project, there shall be established a Citizen's Advisory Committee ("CAC") to review such proposed Project. The CAC shall be established at such time as the MTA determines that it has a viable development proposal from any person or entity regarding a proposed Project, or at such time as the MTA is prepared to issue a Request for Proposals for a proposed Project, or at such earlier time as the MTA may determine in order to ensure the full and adequate involvement of the affected community. Each CAC shall consist of no less than seven (7) members and no more than eleven (11) members, as the Mayor may determine, each member to be representative of any neighborhood and/or community that is to be affected by the proposed Project. The members of the CAC shall be appointed by the Mayor; provided, however, that with respect to each CAC, the Mayor shall consult with the MTA regarding the selection of the members of such CAC and shall appoint no less than three (3) members from a list of at least six (6) community persons recommended by the MTA to a seven (7) member CAC. In case of a CAC having more than seven (7) but fewer than twelve (12) members, the Mayor shall appoint one half, less one, of the total number of members from a list of persons recommended by the MTA. The MTA shall provide the Mayor with a list of recommendations double the number of members to be selected by the Mayor from the MTA's list. Reasonable costs and expenses directly incurred by any CAC in connection with its review of any proposed Project shall be paid for, in accordance with a budget to be mutually established by the CAC and the MTA ("Budget"), with funds provided to the CAC by the MTA; provided, however, that the MTA shall not be obligated to pay for any costs and expenses in excess of $500 incurred

by any CAC for any one line item described in the Budget, or for costs and expenses in excess of an aggregate amount of $3,000 per Project. The MTA may, in its sole discretion, but shall not under any circumstances be obligated to, pay for consultant fees or any other costs incurred by consultants employed by a CAC to assist it in the review of a proposed Project.

2.2 Input From Community. The MTA shall advise the relevant CACs and the BRA of any such proposed Project, and the BRA shall advise members of any community in which a proposed Project is located and the members of any other affected communities, all as identified by the BRA, of any such proposed Project. The BRA shall receive input and comments from such CACs regarding the design of such Project and its effect on the surrounding community. The MTA shall not permit the development of any proposed Project unless it finds, after consultation with the relevant CAC, that such Project shall preserve and increase the amenities of the community.

Article 3
BRA Review Process

3.1 Review. Any proposed Project shall be subject to the design review certification of the BRA, as more particularly set forth in Section 3.2 hereof, with respect to the design, environmental impacts, community and land use impacts of such Project, which review will include the active participation of the relevant CAC.

3.2 Procedure.

(a) Any entity proposing a Project ("Proponent") shall initiate the review required by this MOU by filing a project notification form with the BRA. A Proponent may file a project notification form at any time during the pre-schematic design phase of such Project but in no event later than the time when such Proponent is required to submit notice of such Project to the secretary of environmental affairs in accordance with M.G.L. Chapter 30, Section 62A. The form and content of the project notification form shall be substantially similar to the notification form required by Article 80 of the Boston Zoning Code (the "Code"). The BRA shall publish notice of the receipt of the project notification form in accordance with the notice requirements of Section 80A-2 of the Code. The Proponent shall deliver copies of the project notification form to (1) the relevant CAC, if one has been established, or if a CAC has not yet been created, to any existing community groups and neighborhood councils specified by the BRA as representing the community to be affected by the proposed Project, (2) the Boston Transportation Department, and (3) any other City agency specified by the BRA. The public and all City agencies receiving a copy of the project notification form shall have a period of twenty-one (21) days from the date of the publication of notice of the BRA's receipt of the project notification form to submit written comments to the BRA regarding the proposed Project.

(b) Prior to the issuance of a Scoping Determination, as described in subsection 3.2(c) hereof, the BRA shall schedule a scoping session to determine whether an impact report will be required for the proposed Project and, if an impact report is required, to (i) identify the elements of the proposed Project that the BRA reasonably determines are likely to significantly and negatively impact the environment or the quality of life in the neighborhood surrounding the proposed Project thereby requiring study, analysis and mitigation, (ii) determine the form of such report and a reasonable level of details and alternatives to be studied and analyzed with respect to the elements of the Project identified as being likely significant and negative impacts, and (iii) establish reasonable procedures for the evaluation and review of the environmental impacts. Prior to such scoping session, the MTA shall transmit to the BRA any comments that it has received regarding such proposed Project from any agency of the Commonwealth of Massachusetts (the "State") that has reviewed the proposed Project. At such scoping session, the BRA shall consider only such comments regarding such proposed Project that it has received from the MTA and any comments that it has received from the public and from any agency of the City that has reviewed the proposed Project.

(c) Within fifteen (15) days after the date (the "Final Comment Date") on which all comments with respect to a proposed Project are required to be submitted to the BRA in accordance with subsection 3.2(a) hereof, the BRA shall issue a written Scoping Determination setting forth the determinations of the scoping session as to the required elements of an impact report and establishing a project-specific review schedule for the review of the impact report to be prepared in connection with a proposed Project. The BRA shall deliver to the MTA its draft Scoping Determination no later than ten (10) days after the Final Comment Date. Such draft Scoping Determination shall be reviewed and approved, which approval shall not be unreasonably withheld, by the MTA prior to the issuance thereof by the BRA; provided, however, that if the MTA fails to respond to the BRA's Scoping Determination on or before the date which is fourteen (14) days after the Final Comment Date, the Scoping Determination shall be deemed approved by the MTA. If the BRA fails to deliver its Scoping Determination to the MTA within the above described fifteen (15) day period, the MTA may prepare its own Scoping Determination within ten (10) days after the expiration of said fifteen (15) day period, which Scoping Determination shall thereafter govern.

(d) In the event that the Scoping Determination requires the preparation of an impact report, the Proponent of the proposed Project shall prepare a draft and, if necessary, a final impact report in accordance with the requirements of the Scoping Determination. If, in addition to the environmental review required by this MOU, the proposed Project is subject to additional environmental review by any State agency or pursuant to any requirement of law, the Proponent may submit a single set of documents to satisfy the requirements of the applicable review procedures, provided that such documents satisfy the requirements of the Scoping Determination. All impact reports required to be prepared in accordance herewith shall be reviewed by the BRA, and the BRA must comment thereon in writing within forty (40) days after the BRA's receipt of such report from the Proponent. At such time as the BRA determines that an impact

report is complete, the BRA shall issue a Project Determination in which the BRA shall certify the proposed Project, certify the proposed Project subject to the imposition of such reasonable conditions as the BRA reasonably determines are necessary to protect the interest of the public and mitigate the identified impacts in such a manner as will not render the implementation of the proposed Project impracticable or unfinanceable, or refuse to certify the proposed Project on the grounds that there are no forms of reasonable conditions that could be devised to address the concerns of the public and mitigate the identified impacts. Any certification or conditional certification of the proposed Project shall be subject to the BRA's final design review as described in subsection 3.2(e) hereof. Within five days after its determination with respect to a proposed Project, the BRA shall prepare, adopt and make open to public inspection a report ("Certification Report") that sets forth the reasons for the BRA's certification of, conditional certification of, or refusal to certify the proposed Project.

(e) If the Proponent has not already done so during the environmental review process described in subsection 3.2(d) above, after the BRA issues a Project Determination but prior to the time that an application for a building permit is filed with the Inspectional Services Department of the City, the Proponent shall submit to the BRA, for the BRA's design review, design development materials, including site plans, specifications and final working drawings. The BRA shall review and comment, in writing, on any such design materials within twenty (20) days after the BRA's receipt of any such design materials from the Proponent.

(f)(1) Any certification to be issued or denied by the BRA in accordance with this Section 3.2 shall not be unreasonably withheld, conditioned or delayed.

(f)(2) The MTA shall not lease any Air Rights for a Project except (a) in accordance with the BRA's certification under this Section 3.2. or (b) in the event of arbitration as hereinafter described in subsection 3.2(f)(3), in accordance with the arbitrators' decision.

(f)(3) In the event that a Proponent believes that the BRA has unreasonably withheld, conditioned or delayed its certification hereunder with respect to any particular Project, then, such dispute shall be arbitrated in accordance with this subsection 3.2(f)(3); provided, that at least sixty (60) days have elapsed since the date that the BRA issued its Certification Report in accordance with subsection 3.2(d) hereof. In such case, the Proponent shall send a written notice to the City, with a copy to the MTA and the BRA, specifying the reasons for the Proponent believing that the BRA has unreasonably withheld, conditioned or delayed its certification. Upon receipt of such arbitration demand notice from the Proponent, the MTA shall send a written notice to the City designating a member of the Massachusetts Conveyancers Association Dispute Resolution Register to serve as an arbitrator. The BRA shall respond on behalf of the City within seven (7) days of the City's receipt of the notice from the MTA by designating a second arbitrator from the same Register. The two designated arbitrators shall jointly select a third arbitrator from the same Register within seven (7) days of the

designation of the second arbitrator. Thereafter the arbitrators shall proceed generally in accordance with the Commercial Arbitration Rules of the American Arbitration Association, with the objective of rendering a decision within twenty-one (21) days after the appointment of the third arbitrator. Any decision of the arbitrators shall be by at least a two-thirds majority. The fees of the arbitrators shall be paid for by the Proponent seeking the arbitration. In the event that the arbitrators determine that the BRA has unreasonably withheld, conditioned or delayed its certification of the proposed Project, the BRA shall, within 10 days after such determination, make or revise its certification consistent with the decision of the arbitrators. The decision of the arbitrators shall not be subject to appeal.

(g) Nothing contained in this Section 3.2 of this MOU is intended to modify, amend, alter, abrogate or otherwise affect the Proponent's obligation to comply with any applicable state and federal laws, including without limitation M.G.L. Chapter 30, Sections 61-62H, regarding the review of the design and environmental impacts of a proposed Project.

3.3 Cooperation Among Agencies. The MTA shall review the proposed Project and any comments received from the various departments and agencies of the State and the City to ascertain whether any proposed Project will, in any manner, affect the use, safety, maintenance, repair and operation of the Boston extension portion of the Massachusetts Turnpike.

3.4 Commitment to Minimize Impacts. The parties agree to ensure that any Project is beneficial to the City and to the residents of the affected communities and minimizes, to a reasonable extent, adverse impacts upon the quality of life including, but not limited to, traffic, noise, light, density and air quality in the neighborhood surrounding any such Project.

Article 4
Developer Obligations

4.1 Developer Agreements. The MTA shall cause any Proponent to:

(a) enter into one or more agreements with the BRA consistent with the BRA's certification or conditional certification of the Project, including but not limited to, voluntary cooperation agreements, voluntary construction mitigation agreements, and voluntary transportation access plans, all in such form as the BRA and the Proponent may mutually determine;

(b) file for the appropriate building permits required by the City's Department of Inspectional Services or any other City agency and pay the applicable fee for such building permits in connection with the proposed Project; and

(c) agree to pay full M.G.L. Chapter 59 taxes on the buildings and/or other things erected or affixed on any interest in MTA Property, including MTA Air Rights, held by such Proponent within the territorial limits of the City of Boston (but not on the MTA Property, including the MTA Air Rights) or, if applicable, enter into payment in lieu of tax (PILOT) agreements for the payment of real property taxes on the buildings and/or other things erected or affixed on any interest in MTA Property, including MTA Air Rights, held by such Proponent within the territorial limits of the City of Boston Property (but not on the MTA Property, including the MTA Air Rights).

4.2 Compliance Determination. The Proponent shall not apply to the Inspectional Services Department of the City for a building permit for any proposed Project that is subject to design review pursuant to this MOU, unless the Proponent shall have transmitted to the BRA a copy of the proposed building permit application, including each plan, drawing and specification to be filed in connection therewith, and the BRA shall have reviewed such plans and the Director of the BRA shall have issued a certification stating that the proposed Project has been certified by the BRA pursuant to subsection 3.2(f)(2) or subsection 3.2(f)(3) hereof.

Article 5
Miscellaneous

5.1 Binding Effect. This MOU is a legally binding document having the full force and effect of the law between the parties and shall be enforceable by the signatories hereto in a court of law by equitable relief, but shall create no rights hereunder in any party not a signatory hereto nor shall it give rise to any rights or claims against any party not a signatory hereto, except the right of a Proponent to arbitrate certain disputes in accordance with subsection 3.2(f)(3) hereof.

5.2 Applicable Law. This MOU shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts.

5.3 Entire Agreement. This MOU sets forth the entire agreement of the parties hereto with respect to the subject matter contained herein, and no amendment of this MOU shall be effective unless it is in writing and signed by both parties to this MOU.

5.4 Notice. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed delivered hereunder if mailed postage prepaid, by registered or certified mail, return receipt requested, or delivered by hand to the following address, or to such other address as may be specified by either of the parties in writing:

If to the City: The City of Boston
One City Hall Square, 5th Floor
Boston, MA 02201-1007
Attention: Mayor

with a copy to: Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201-1007
Attention: Director

If to the MTA: Massachusetts Turnpike Authority
State Transportation Building
10 Park Plaza, Suite 5170
Boston, MA 02116
Attention: Chairman

5.5 Paragraph Headings. The paragraph headings in this MOU are for convenience and reference only, and shall not be used to interpret, clarify, limit or amend the contents or meaning of any provision.

IN WITNESS WHEREOF, as of June 1, 1997, the Chairman of the Massachusetts Turnpike Authority, the Mayor of the City of Boston and the Director of the Boston Redevelopment Authority have executed this Memorandum of Understanding.

MASSACHUSETTS TURNPIKE AUTHORITY

James J. Kerasiotes
Chairman

Approved as to Form:

Robert M. Ruzzo
General Counsel
Massachusetts Turnpike Authority

THE CITY OF BOSTON

Thomas M. Menino
Mayor

Approved as to Form:

Merita A. Hopkins
Corporation Counsel
City of Boston

BOSTON REDEVELOPMENT AUTHORITY

Thomas N. O'Brien
Director

Approved as to Form:

Kevin Morrison
General Counsel
Boston Redevelopment Authority